

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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USDC Docket Number : 05-cv-11418

Andrew Chmielinski

v.

Commonwealth of Massachusetts Office of the Commissioner of Probation

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**CLERK'S CERTIFICATE**

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents numbered:

1-23

and contained in 1 Volume(s) are the original or electronically filed pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 4/12/2007.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on April 24, 2007.



Receipt of the documents in the above entitled case is hereby acknowledged this date: 4/25/07.

R. Barchard  
Deputy Clerk, US Court of Appeals

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Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

APPEAL

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:05-cv-11418-NMG**

Chmielinski v. Commonwealth of Massachusetts Office of the Comissioner of Probation et al  
 Assigned to: Judge Nathaniel M. Gorton  
 Referred to: Magistrate Judge Leo T. Sorokin  
 Cause: 42:1983 Civil Rights (Employment Discrimination)

Date Filed: 07/06/2005  
 Jury Demand: Both  
 Nature of Suit: 442 Civil Rights: Jobs  
 Jurisdiction: Federal Question

**Plaintiff****Andrew Chmielinski**

represented by **Mitchell J. Notis**  
 Annenberg & Levine, LLC  
 370 Washington Street  
 Brookline, MA 02446  
 617-566-2700  
 Fax: 617-566-6144  
 Email: mitchnotis@aol.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant****Commonwealth of Massachusetts  
Office of the Comissioner of  
Probation**

represented by **Sarah M. Joss**  
 Attorney General's Office  
 200 Portland Street  
 3rd Floor  
 Boston, MA 02114  
 617-727-2200  
 Fax: 617/727-3076  
 Email: Sarah.Joss@ago.state.ma.us  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Stephen Dick**  
 Attorney General's Office  
 200 Portland Street  
 Boston, MA 02114  
 617-727-2200  
 Fax: 617-727-3078  
*TERMINATED: 08/16/2006*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

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| 07/06/2005 |      | If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Sorokin. (Elefther, Elizabeth) (Entered: 07/07/2005)   |
| 07/06/2005 | ●    | Summons Issued as to Commonwealth of Massachusetts Office of the Commissioner of Probation, Commonwealth of Massachusetts Trial Court, John J. O'Brien, Anthoney J. Sicuso. (Elefther, Elizabeth) (Entered: 07/07/2005)   |
| 09/27/2005 | ● 2  | SUMMONS Returned Executed Commonwealth of Massachusetts Trial Court served on 9/27/2005, answer due 10/17/2005. (Elefther, Elizabeth) (Entered: 09/28/2005)   |
| 09/27/2005 | ● 3  | SUMMONS Returned Executed Commonwealth of Massachusetts Office of the Commissioner of Probation served on 8/24/2005, answer due 9/13/2005. (Elefther, Elizabeth) (Entered: 09/28/2005)  |
| 09/27/2005 | ● 4  | SUMMONS Returned Executed John J. O'Brien served on 9/6/2005, answer due 9/26/2005. (Elefther, Elizabeth) (Entered: 09/28/2005)   |
| 09/27/2005 | ● 5  | SUMMONS Returned Executed Attorney General of the Commonwealth of Massachusetts served on 8/24/2005, answer due 9/13/2005. (Elefther, Elizabeth) (Entered: 09/28/2005)  |
| 09/27/2005 | ● 6  | SUMMONS Returned Executed Anthoney J. Sicuso served on 8/23/2005, answer due 9/12/2005. (Elefther, Elizabeth) (Entered: 09/29/2005)   |
| 10/04/2005 | ● 7  | ANSWER to Complaint with Jury Demand by Commonwealth of Massachusetts Office of the Commissioner of Probation, Commonwealth of Massachusetts Trial Court, John J. O'Brien, Anthoney J. Sicuso.(Dick, Stephen) (Entered: 10/04/2005)   |
| 11/14/2005 | ● 8  | NOTICE of Scheduling Conference Scheduling Conference set for 1/4/2006 03:15 PM in Courtroom 4 before Judge Nathaniel M. Gorton. (Nicewicz, Craig) (Entered: 11/14/2005)  |
| 12/29/2005 | ● 9  | JOINT STATEMENT re scheduling conference. (Notis, Mitchell) (Entered: 12/29/2005)   |
| 12/30/2005 | ● 10 | CERTIFICATION pursuant to Local Rule 16.1 by Andrew Chmielinski. (Sonnenberg, Elizabeth) (Entered: 12/30/2005)  |
| 01/04/2006 | ●    | ElectronicClerk's Notes for proceedings held before Judge Nathaniel M. Gorton : Scheduling Conference held on 1/4/2006. Motion to dismiss 2/28/06, responses 3/31/06. Amendments and or supplements 6/30/06, written discovery served 7/31/06, answered 8/31/06. Fact depositions 10/31/06. Experts designated 11/15/06, expert depositions 12/31/06. Dispositive motions 1/31/07, responses 2/28/07. Jury Trial set for 5/7/2007 09:00 AM in Courtroom 4 before Judge Nathaniel M. Gorton. Pretrial Conference set for 4/19/2007 03:00 PM in Courtroom 4 before Judge Nathaniel M. Gorton. Refer to ADR 11/06. (Nicewicz, Craig) (Entered: 01/10/2006) |

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| 01/18/2006 | ⑪ | CERTIFICATE OF CONSULTATION L.R. 16.1 by Stephen Dick on behalf of Commonwealth of Massachusetts Office of the Comissioner of Probation, Commonwealth of Massachusetts Trial Court, John J. O'Brien, Anthoney J. Sicuso. (Dick, Stephen) (Entered: 01/18/2006)  |
| 02/24/2006 | ⑫ | MOTION for Extension of Time to March 13, 2006 to File <i>Dispositive Motion</i> by Attorney General of the Commonwealth of Massachusetts, Commonwealth of Massachusetts Trial Court, John J. O'Brien, Anthoney J. Sicuso.(Dick, Stephen) (Entered: 02/24/2006)   |
| 03/08/2006 | ⑬ | Judge Nathaniel M. Gorton : Electronic ORDER entered granting ⑫ Motion for Extension of Time to File dispositive motions. Dispositive motions 3/13/06. (Nicewicz, Craig) (Entered: 03/08/2006)  |
| 03/13/2006 | ⑭ | First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> by Attorney General of the Commonwealth of Massachusetts, Commonwealth of Massachusetts Office of the Comissioner of Probation, Commonwealth of Massachusetts Trial Court, John J. O'Brien, Anthoney J. Sicuso.(Dick, Stephen) (Entered: 03/13/2006)   |
| 04/06/2006 | ⑮ | Assented to MOTION for Extension of Time to april 26, 2006 to File Response/Reply <i>to motion to dismiss</i> by Andrew Chmielinski.(Notis, Mitchell) (Entered: 04/06/2006)   |
| 04/06/2006 | ⑯ | Judge Nathaniel M. Gorton : Electronic ORDER entered granting ⑮ Motion for Extension of Time to File Response/Reply re ⑭ First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> Responses due by 4/26/2006 (Nicewicz, Craig) (Entered: 04/06/2006)  |
| 04/25/2006 | ⑰ | Opposition re ⑭ First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> filed by Andrew Chmielinski. (Notis, Mitchell) (Entered: 04/25/2006)   |
| 08/16/2006 | ⑱ | NOTICE of Substitution of Appearance by Sarah M. Joss on behalf of Attorney General of the Commonwealth of Massachusetts, Commonwealth of Massachusetts Office of the Comissioner of Probation, Commonwealth of Massachusetts Trial Court, John J. O'Brien, Anthoney J. Sicuso (Joss, Sarah) Modified on 8/18/2006 (Sonnenberg, Elizabeth). Additional attachment(s) added on 8/18/2006 (Sonnenberg, Elizabeth). (Entered: 08/16/2006)                          |
| 11/01/2006 | ⑲ | Judge Nathaniel M. Gorton : ORDER entered. REFERRING MOTION ⑭ First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> filed by John J. O'Brien,, Attorney General of the Commonwealth of Massachusetts,, Commonwealth of Massachusetts Trial Court,, Commonwealth of Massachusetts Office of the Comissioner of Probation,, Anthoney J. Sicuso, to Magistrate Judge Leo T. Sorokin for R&R.(Nicewicz, Craig) (Entered: 11/01/2006) |
| 11/09/2006 | ⑳ | ELECTRONIC NOTICE of Hearing on Motion ⑭ First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> :The Motion Hearing has been set for 12/6/2006 02:30 PM in Courtroom 14   |

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|            |      | before Magistrate Judge Leo T. Sorokin. (Simeone, Maria) (Entered: 11/09/2006)  |
| 11/20/2006 | ⑩ 18 | Joint MOTION to Continue hearing on motion to dismiss by Andrew Chmielinski.(Notis, Mitchell) (Entered: 11/20/2006)   |
| 11/22/2006 | ⑩    | Judge Nathaniel M. Gorton : Electronic ORDER entered granting 18 Motion to Continue (Nicewicz, Craig) (Entered: 11/22/2006)   |
| 11/22/2006 | ⑩    | ELECTRONIC NOTICE of Hearing on Motion 13 First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> : Motion Hearing set for 12/18/2006 11:30 AM in Courtroom 4 before Judge Nathaniel M. Gorton. (Nicewicz, Craig) (Entered: 11/22/2006)  |
| 12/01/2006 | ⑩    | ELECTRONIC NOTICE of Hearing on Motion; The Motion Hearing has been reset for 12/13/2006 02:30 PM in Courtroom 14 before Magistrate Judge Leo T. Sorokin re: 13 First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> : (Simeone, Maria) (Entered: 12/01/2006)   |
| 12/01/2006 | ⑩    | ELECTRONIC NOTICE: Please be advised the hearing previously set before District Judge Gorton on 12/18/06 at 11:30am has been cancelled and rescheduled before MJ Sorokin; re Notice of Hearing on Motion (Simeone, Maria) (Entered: 12/01/2006)   |
| 12/01/2006 | ⑩    | ELECTRONIC NOTICE of Hearing on Motion; The hearing has been reset for the 12/18/06 at the request of counsel; 13 First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> : Motion Hearing set for 12/18/2006 03:00 PM in Courtroom 14 before Magistrate Judge Leo T. Sorokin. (Simeone, Maria) (Entered: 12/01/2006)  |
| 12/18/2006 | ⑩    | Electronic Clerk's Notes for proceedings held before Magistrate Judge Leo T. Sorokin : Motion Hearing held on 12/18/2006 re 13 First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> ; Court hears oral argument of counsel and takes the matter under advisement. (Digital Recording #d.) (Simeone, Maria) (Entered: 12/27/2006)  |
| 12/22/2006 | ⑩ 19 | Judge Leo T. Sorokin : ORDER entered. REPORT AND RECOMMENDATIONS re 13 First MOTION to Dismiss for Lack of Jurisdiction <i>and Failure to State a Claim</i> filed by John J. O'Brien, Attorney General of the Commonwealth of Massachusetts, Commonwealth of Massachusetts Trial Court, Commonwealth of Massachusetts Office of the Commissioner of Probation, Anthoney J. Sicuso. For the reasons stated herein, I recommend that the District Judge ALLOW the motion to dismiss. Objections to R&R due by 1/11/2007. (Tyler, Rebecca) (Entered: 12/22/2006) |
| 01/05/2007 | ⑩ 20 | OBJECTION to 19 Report and Recommendations of Magistrate on Defendants' Motion to Dismiss filed by Andrew Chmielinski. (Notis, Mitchell) (Entered: 01/05/2007)  |
| 01/10/2007 | ⑩ 21 | Response by Commonwealth of Massachusetts Office of the Commissioner  |

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|            |      | of Probation, Commonwealth of Massachusetts Trial Court, John J. O'Brien, Anthoney J. Sicuso to <u>20</u> Objection to Report and Recommendations. (Joss, Sarah) (Entered: 01/10/2007)   |
| 03/22/2007 | • 22 | Judge Nathaniel M. Gorton : MEMORANDUM AND ORDER entered granting <u>13</u> Motion to Dismiss for Lack of Jurisdiction, adopting Report and Recommendations re <u>19</u> Report and Recommendations. "After consideration of Chmielinski's objections to the Magistrate Judge's report and recommendation, the Court accepts and adopts those recommendations. The defendants' motion to dismiss (Docket No. 13) is, therefore, ALLOWED. So ordered." (Sonnenberg, Elizabeth) (Entered: 03/23/2007)  |
| 04/12/2007 | • 23 | NOTICE OF APPEAL as to <u>22</u> Order on Motion to Dismiss/Lack of Jurisdiction, Order on Report and Recommendations,, by Andrew Chmielinski Filing fee \$ 455, receipt number 1482418 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 5/2/2007. (Notis, Mitchell) (Entered: 04/12/2007) |
| 04/13/2007 | •    | E-Mail Notice re 23 originally issued on 4/12/07 returned as undeliverable. Name of Addressee: Stephen Dick. The ECF Help Desk has contacted the law firm on record, who advised that the attorney is no longer employed by that firm. The attorney's email address has been removed from the database to prevent the return of additional undeliverable email notices. (Hassett, Kathy) (Entered: 04/13/2007)   |